

**Amendments to the Drawings**

The attached replacement drawings replace FIG. 1, FIG. 6, and FIG. 16.

## **REMARKS**

### **I. STATUS OF CLAIMS**

Claims 21-23 and 26-32 were under examination at the time of the current Office Action. Applicants elected to pursue claims 21-23, 26-31, and 32 in response to the Office Action dated February 12, 2009. Claims 22, 23, 26, 27, 30, and 31 have been canceled. Claims 14, 6, 9, 12, 13, 19, 20, 41, and 43 have been withdrawn. Claims 21 and 32 have been amended. New claims 44 and 45 have been added. Support for the claim amendments and the new claims can be found in the specification as filed at least on page 4. No new matter has been added. Claims 21 and 28, 29, and 32 are currently under examination.

### **II. DRAWINGS**

The Action objects to the drawing for allegedly reciting sequences with out the appropriate sequence identifiers. Applicants provide replacement drawings that include the appropriate sequence identifiers. The rejection is moot.

### **III. CLAIM OBJECTIONS**

The Action objects to claim 22 and 27. Claims 22 and 27 have been canceled, therefore the objections are moot.

### **IV. REJECTIONS UNDER 35 U.S.C. 112**

The Action includes two rejections under 35 U.S.C. 112. The Action rejects claims 22, 26, and 27 as being indefinite.

Claims 22, 26, and 27 have been canceled, therefore the rejection of these claims is moot.

The Action also rejects claims 30 and 31 as allegedly lacking enablement. Claims 30 and 31 have been canceled. Applicants reserve the right to pursue these claims in a continuing application.

## **V. REJECTIONS UNDER 35 U.S.C. 102**

Claims 22, 23, and 26-29 are rejected as being allegedly anticipated by U.S. Patent publication 2003/0022849 and its corresponding Patent 7,227,011. Applicants traverse.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. MPEP § 2131 citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

The current claims are directed to a particular fragment of West Nile virus E protein. As is illustrated in FIG. 11, this fragment is specific for West Nile virus and distinguishes West Nile from other flavivirus. Neither U.S. Patent 7,227,011 or U.S. Patent publication 2003/0022849 describe the currently claimed peptide. All elements of the claimed invention are not set forth in the references, thus claimed invention is not anticipated. Applicants respectfully request the withdrawal of the rejection.

## **VI. REJECTIONS UNDER 35 U.S.C. 103**

Claim 32 is rejected as allegedly being obvious in view of U.S. Patent publication 2003/0022849 in further view of PCT publication WO 02/083903. Applicants traverse.

Obviousness requires a suggestion of all the elements in a claim (*CFMT, Inc. v. Yieldup Int'l Corp.*, 349 F.3d 1333, 1342 [68 USPQ2d 1940] (Fed. Cir. 2003)) and “a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.” *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 [82 USPQ2d 1385] (2007).

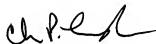
As described above, U.S. Patent publication 2003/0022849 does not describe all elements of the claimed invention. Furthermore, WO 02/083903 does the West Nile virus domain III

polypeptide as claimed and therefore does not remedy the deficiency of U.S. Patent publication 2003/0022849. Applicants respectfully request the withdrawal of the rejection.

## VII. CONCLUSION

The Examiner is invited to contact the undersigned attorney at (512) 536-3167 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,



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